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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.B., a Person Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

K.M. et al.,

Defendants and Appellants.

E058248

(Super.Ct.No. J245526)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cheryl C. Kersey,
Judge. Affirmed.

Cristina Gabrielidis, under appointment by the Court of Appeal, for Defendant and
Appellant K.M.

Patricia K. Saucier, under appointment by the Court of Appeal, for Defendant and
Appellant E.B.

Jean-Rene Basle, County Counsel, Jeffrey L. Bryson, Deputy County Counsel for Plaintiff and Respondent.

No appearance for Minor.

Plaintiff and respondent San Bernardino Department of Children and Family Services (the Department) took J.B. (minor; born August 2012) into protective custody when he was released from the hospital after both minor, and defendant and appellant K.M. (mother), tested positively for amphetamines. Mother, and defendant and appellant E.B. (father) (collectively “parents”), had failed to reunify with three previous children. The department placed minor with the prospective adoptive parents (PAPs) on August 10, 2012. The juvenile court denied parents reunification services due to their failure to reunify with the three other children. On March 5, 2013, the juvenile court terminated parents’ parental rights.

On appeal, mother contends insufficient evidence supported the court’s determination the beneficial parental relationship exception did not apply. Father does not independently challenge the juvenile court’s order, but maintains that should mother prevail, his parental rights must also be reinstated. (*In re DeJohn B.* (2000) 84 Cal.App.4th 100, 102, 110.) We hold substantial evidence supports the juvenile court’s order terminating parental rights. The judgment is, therefore, affirmed.

FACTUAL AND PROCEDURAL HISTORY

The department received a referral when mother gave birth to minor and both tested positively for amphetamines. Mother had received no prenatal care. Minor was born weighing four pounds, six ounces. The hospital discharged mother on August 5,

2011, but she failed to visit with minor until August 8, 2012. At that visit, parents became embroiled in an argument.

On August 9, 2012, the social worker visited parents' residence; they rented a six-by-six foot bedroom with one broken window covered by cardboard, offering no ventilation; they apparently had no house privileges. Parents had a few items of clothing and a car seat, but had no diapers, food, or bedding for minor. Parents appeared to be under the influence. Mother initially denied using drugs, but then admitted she had relapsed. Father also denied using drugs, but mother reported he used with her. Parents reported having unstable living conditions and being unemployed.

Mother and father both had criminal histories: Mother's criminal history included burglaries, domestic violence, possession of controlled substances, receiving stolen property, resisting arrest, and public intoxication. Father's criminal history included burglary, domestic violence, possession of drug paraphernalia, multiple instances of possession of controlled substances, receiving stolen property, sales or transportation of a controlled substance, and driving under the influence. Parents had a history with the department, having failed to reunify with the three other children.

The department filed a Welfare and Institutions Code¹ section 300 juvenile dependency petition alleging parents had a substance abuse history (B-1, B-4), a history of engaging in domestic violence (B-2, B-5), father had a criminal history (B-3), and mother had mental health issues (B-6), all of which impaired their ability to care for

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

minor and placed minor at risk. The department additionally alleged parents had failed to reunify with the three other children and services had been terminated on May 12, 2009 (J-9, J-10). On August 10, 2012, the department placed minor with the PAPs. On August 15, 2012, the juvenile court detained minor.

In the August 30, 2012, jurisdiction and disposition report, the social worker recommended parents not be offered reunification services due to their failure to reunify with their prior children. The social worker noted mother was 20 minutes late to a visit with minor on August 21, 2012, and three to four hours late to a visit on August 28, 2012. Mother denied having any criminal history, and having sustained any physical abuse against her by father. The social worker obtained a police report from March 20, 2010, which reflected an incident of domestic violence in which father repeatedly punched and kicked mother's face and body. Father was arrested for corporal injury to mother; he reportedly grabbed mother, slammed her to the ground, kicked her in the head and body numerous times, and then punched her in the head and body numerous times. Mother failed to show for drug testing on August 21, and 28, 2012.

The juvenile court continued a September 5, 2012, hearing after finding father had not been noticed; the department had been unable to locate him. Mother failed to show timely for the hearing and, thus, missed a visit with minor scheduled for that day. She also failed to appear for a drug test scheduled for that day. Mother reported she was no longer with father and did not know how to find him; however, later that same day the social worker observed mother waiting with father at a bus stop.

On September 11, 2012, mother visited with minor. Mother slept with minor during the entirety of her visit. She reported she had had no contact with father, but the prospective adoptive mother reported mother told her father was waiting for her in the parking lot. Mother brought someone else's urine to a drug test scheduled for that day. When caught, mother refused to test.

On September 18, 2012, mother disclosed she had last used drugs a few weeks prior. She reported she was living with father. Mother denied any current drug use or domestic violence at the hands of father. Mother agreed to drug test that day, but failed to show.

At a hearing on September 26, 2012, the juvenile court found the allegations in the petition true and took jurisdiction over minor. The court held the dispositional hearing on October 3, 2012. It removed minor from parents' custody, declined to offer reunification services, and set the date for the section 366.26 hearing.² Father made his first appearance in the matter on November 9, 2012. He reported he was now incarcerated for carrying a weapon and a parole violation. Father indicated he would most likely be sentenced to a term of 17 months.

In the section 366.26 report filed January 22, 2013, the social worker reported mother had visited with minor on September 11, 25, October 9, November 28, and December 11, 2012. The social worker observed, "It appears the mother loves her child, as she was observed to be gentle and loving with [minor] during visits." Mother missed

² Neither mother nor father appeared at either the jurisdictional or dispositional hearings.

scheduled visits with minor on August 28, September 18, September 19, November 8, and November 13, 2012.

In a subsequent report filed February 5, 2013, the social worker noted, “There is a mutual attachment between the child and his [PAPs] and the child relates to [the PAPs] and recognizes them as parental figures.” The PAPs described their relationship with minor as being like one in which they were his real parents: ““We’re in love with him.”” The PAPs indicated a willingness to consider written contact with mother if requested by mother and facilitated by the department. The social worker observed the PAPs, “are dedicated to the [minor] and committed to raising him to adulthood.”

The juvenile court granted the PAPs de facto parent status on February 27, 2013. At the section 366.26 hearing on March 5, 2013, mother testified she had visited with minor every Tuesday for an hour since the previous October and had not missed any visits. She testified she plays with him and makes him laugh and smile. Minor knows she is his mother and they are very well bonded.

Minor’s counsel argued, “Contrary to Mother’s testimony, the report indicates she has only visited half of all the visits that have been scheduled.” Counsel for the department argued, “the testimony I heard from Mother does not support the parent-child bond exception being applied in this case.” The juvenile court observed, “In this particular case, I’m going to have to agree with counsel. It is really a nonissue. The child was born in August and has been in a concurrent planning home generally since then. He was [five] days old when placed.” “The mother has visited intermittently, so to establish an exception for bonding, she would have had to have regular visitation and

contact.” The juvenile court found minor adoptable, terminated parents’ parental rights, and ordered adoption as the permanent plan.

DISCUSSION

Mother argues insufficient evidence supports the court’s determination the beneficial parental relationship exception did not apply such that the juvenile court should not have terminated her parental rights. We disagree.

Once reunification services have been terminated and a minor has been found adoptable, “adoption should be ordered unless exceptional circumstances exist” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.) Under section 366.26, subdivision (c)(1)(B)(i), one such exception exists where “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” The parent has the burden of proving termination would be detrimental to the child. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350; *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1207.)

“‘[T]he court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.’ [Citation.]” (*In re C.F.* (2011) 193 Cal.App.4th 549, 555.)

“[I]t is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.*,

supra, 78 Cal.App.4th at p. 1350; see also *In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51.) “We determine whether there is substantial evidence to support the trial court’s ruling by reviewing the evidence most favorably to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court’s ruling. [Citation.] If the court’s ruling is supported by substantial evidence, the reviewing court must affirm the court’s rejection of the exceptions to termination of parental rights [Citation.]” (*In re S.B.* (2008) 164 Cal.App.4th 289, 297-298.)

Mother has failed to satisfy her burden both of proving she maintained regular visitation with minor and that termination of her parental rights would be detrimental to minor. First and foremost, mother did not maintain regular contact with minor. Mother failed to visit with minor for three days after she was released from the hospital. When she eventually did visit, she engaged in a verbal altercation with father. Mother missed scheduled visits with minor on August 28, September 5, 18, 19, November 8, and November 13, 2012. Mother did visit with minor on August 21, September 11, 25, October 9, November 28, and December 11, 2012; however, she was 20 minutes late to the first of these visits, and spent another visit sleeping.³ Thus, mother, who had never had custody of minor, only showed up to approximately half her allotted visitation. Therefore, the evidence supports the juvenile court’s determination mother failed to maintain regular contact with minor.

³ Curiously, though the last report in the instant case was dated February 5, 2013, and a previous report was filed on January 25, 2013, neither reflected any further information regarding any visitation. The previous report filed January 22, 2013, only reflected information regarding a visit most recently occurring on December 11, 2012.

Mother's argument the beneficial parental relationship exception applied relies almost exclusively on her own testimony that she played with minor making him laugh and smile during visitation. Mother testified then seven-month-old minor knew she was his mother and they were very well bonded. However, mother's credibility was severely undermined by the number of contradictions apparent in the record between what mother told the social worker and to what she testified, and to observations demonstrating otherwise. Mother initially denied using drugs, but then admitted to relapsing.

Mother denied having any criminal history, but the record demonstrates an extensive one. Mother denied any domestic violence at the hands of father. However, the department obtained a police report that reflected father severely beat mother. Moreover, the previous dependency proceedings involving mother's other three children also involved allegations of domestic violence by father. Even after the department's receipt of these reports, mother denied any domestic violence at the hands of father.

Mother reported she was no longer with father and did not know how to find him; however, later that same day the social worker observed mother waiting with father at a bus stop. On another day, mother reported she had had no contact with father, but the prospective adoptive mother reported mother told her father was waiting for her in the parking lot. Later, mother reported she was living with father. Furthermore, mother testified at the section 366.26 hearing she had not missed any visits with minor even though the reports directly contradict this. Thus, the juvenile court could reasonably have viewed mother's testimony regarding her relationship with minor as suspect.

Finally, the evidence here supported a finding minor's safety and security in his placement in the prospective adoptive home far outweighed any benefit of continued visitation with mother. While mother never had custody of minor and visited him only intermittently, the department had placed him with the PAPs only five days after his birth. He lived with them during the entirety of the proceedings below. The PAPs were bonded to minor, felt as if he was their own child, and were dedicated to raising him to adulthood. Thus, the balance weighed in favor of placement with the PAPs. Substantial evidence supported the juvenile court's order terminating parental rights.

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

HOLLENHORST
Acting P. J.

McKINSTER
J.